UNITED NATIONS

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 638

Case No. 709: TREGGI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Second Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas at the request of Gian Carlo Treggi, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 January 1993, the time-limit for the filing of an application to the Tribunal;

Whereas, on 25 January 1993, the Applicant filed an application requesting the Tribunal, inter alia:

> "(a) to declare invalid the decision of the Secretary-General to reject the Applicant's request for reimbursement of the portion of the airfares to the former Soviet Union during his official travel in June 1991 and daily subsistence allowance for a three-day stay in that country;
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> ...
>
> (e) to find that the Applicant has acted in good faith and in the interests of the United Nations;
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> (f) to find that the Applicant's mission, far from creating problems, has been beneficial to the Organization, and that, therefore, the Organization, in denying the Applicant the reimbursement for the costs incurred in connection with the travel, has obtained an unjust enrichment;
>
> ...

(h) to order the Secretary-General to reimburse the Applicant for the costs incurred in connection with the travel to the former Soviet Union;

(i) to fix the amount of compensation payable to the Applicant for the injury sustained as a result of unwarranted and widely circulated attacks upon his integrity, and for the adverse publicity resulting from notoriety conferred on him."

Whereas the Respondent filed his answer on 13 May 1993;

Whereas the Applicant filed written observations on 20 December 1993;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 25 March 1971, on a probationary appointment at the P-3, step 1 level, as an Administrative Officer in what is now the Office of Human Resources Management (OHRM). On 1 May 1972, his functional title was changed to Recruitment Officer and on 1 May 1973, his appointment was converted to permanent. The Applicant was promoted to the P-4 level, with effect from 1 April 1974. On 1 July 1978, he was transferred to the Department of Technical Cooperation and Development (DTCD). He was promoted to the P-5 level, as a Senior Recruitment Officer, with effect from 1 April 1980 and on 1 May 1984, his functional title became Chief of Unit. The Applicant separated from the service of the United Nations on 1 May 1992.

On 24 August 1989, the then Chief of Technical Assistance Recruitment and Administration Service (TARAS), authorized the Applicant to travel to Moscow, for three days, on an official mission, in combination with home leave travel. The visit to Moscow did not materialize, as the entry visa arrived too late.

On 15 April 1991, the Applicant wrote to the Executive Officer of DTCD, through the new Chief of TARAS, asking that, in connection with his home leave travel to Rome, his postponed mission to Moscow be authorized and requesting that his "travel authorization be processed accordingly."

In the absence of the Director, Programme Support Division, DTCD, the Applicant obtained from the new Chief of TARAS, endorsement of his travel to Moscow. A travel authorization was issued on 1 June 1991. The "Purpose of Travel" was stated as "1991 Home leave travel to Rome, ... combined with stopover for 3 days in USSR to hold discussions with the National Recruitment Service regarding participation of candidates in the technical assistance programme."

When the Director, Programme Support Division, DTCD, learned of the Applicant's plans, he indicated, in a note dated 21 June 1991, to the Chief of TARAS, that he would not approve the additional funds required for the Applicant's three-day stay in Moscow. On 25 June 1991, in a memorandum purportedly copied to the Applicant, he requested the Acting Executive Officer of DTCD to amend the Applicant's travel authorization form. This was done on the same day. The new Travel Authorization stated that its purpose was "To cancel official stopover for 3 days in Moscow combined with Home leave travel ... decrease funds ... $663 accordingly and change of departure and return dates." According to the Applicant, on 25 June 1991, when he picked up his ticket, he was informed by the UN Travel Agency that the Executive Office had amended his Travel Authorization and cancelled the portion of his trip to the Soviet Union.

Nevertheless, the Applicant departed Headquarters on authorized home leave travel to Rome on 27 June 1991. His ticket included a stay-over in Moscow, that portion of the trip having been paid for out of his own pocket. In Moscow, he met with government officials to discuss the participation of Soviet national experts - particularly in natural resources - in the UN programme of technical assistance.

On 19 August 1991, he wrote to the Under-Secretary-General, DTCD, attaching a report on his mission.

On 11 September 1991, the Applicant filed a claim for reimbursement for the portion of the ticket for which he had paid (US$575.00) and daily subsistence allowance for three days in Moscow

and Leningrad (US$615.00). On 17 September 1991, this request was denied.

On 13 November 1991, the Applicant requested the Secretary-General to review that administrative decision. On 18 December 1991, he lodged an appeal with the Joint Appeals Board (JAB), alleging that the cancellation of his trip to the Soviet Union had been initiated by the Director, Programme Support Division, DTCD, out of revenge for prior disagreements.

On 4 October 1991, the Under-Secretary-General, DTCD, had reported to the Assistant Secretary-General, OHPM, the Applicant's travel to the Soviet Union, in disregard of departmental instructions, as a case of possible misconduct.

An investigation was held. In a letter to the Applicant, dated 12 February 1992, the Director, Staff Administration and Training Division, OHRM, stated inter alia:

> "5. Regardless of what you might have thought the reason was [for the cancellation of the trip], the fact is that you then proceeded with your plans, fully knowing that you had no travel authorization to go to Moscow.
>
> 6. You actually left New York for Moscow on Thursday, 27 June 1991, in the evening. I therefore do not share your view that the time between the issuance of your air travel ticket and your departure did not allow you to seek clarification on the matter, when, as you concede, you had ample reason to do so.
>
> 7. After a review of all the circumstances, ... , the Assistant Secretary-General, Human Resources Management, has decided that the case should be closed in accordance with administrative instruction ST/AI/371 of 2 August 1991. It remains, however, that you engaged in travel which was not properly authorized, and adopted a course of conduct having serious implications for the Organization without prior discussion with your superiors. You were remiss in doing so."

The JAB adopted its report on 26 May 1992. The considerations and recommendations of the majority of the Panel read as follows:

"...

21. The Panel agreed that the methods of communication between the Director and the Appellant in connection with the revocation of the travel authorization was unsatisfactory. The Director never communicated with Appellant directly nor did he clearly indicate to the Acting Director, who had endorsed the travel request on the understanding that it was authorized, that it was not. His memorandum to the latter dealt only with the additional costs of the trip which he was not prepared to approve (...).

22. There would have been enough time before the Appellant went to pick up his tickets to make it clear to him that what was involved was not only the expenditure but the trip itself to which the Director was opposed at that time for reasons other than financial. In the light of this failure by the Administration to make its views on his intended trip to the USSR clear and unambiguously known to the Appellant, it was not surprising that the Appellant should have been left in some doubt on this crucial point.

23. However, the majority of the Panel felt that, nevertheless, once the Appellant had been informed that his travel authorization had been amended and the portion for travel to the USSR had been cancelled, he was under notice that he could no longer assume that he had such authorization, convinced though he might have been that he should have it. It was incumbent upon him to seek clarification from his supervisor at that point. Although the time left for doing so before his intended departure was short - two days - it was sufficient to allow him to do so.

24. In the view of the majority, an experienced staff member of Appellant's rank with twenty years' experience in the service should have known that he lacked the authority to decide on his own to undertake the travel at issue. The amended travel authorization showed that his superiors did not want him to undertake it. While he may have questioned the justification for their decision, he could not ignore that decision except at his own risk.

25. Regrettable though it be that no clarification of the reasons for the decision was given, it was incumbent on the Appellant to seek it if he was in doubt, however little time there might have been left. Staff members cannot assume that they can make decisions on their own regarding travel at the expense of the Organization, without the authorization of their superiors.

> 26. While the majority regret that in this case this results in the staff member having incurred expenses for which he is not entitled to be reimbursed, for the reasons stated above, it recommends that the appeal be rejected.
>
> 27. At the same time, the majority wishes to draw to the attention of the Administration that Appellant was informed only at the last moment of the cancellation of what he believed to be an authorized mission. It recommends that steps be taken to avoid such delays in future."

In a dissenting opinion, one member of the JAB recommended that the Applicant be reimbursed his "per diem and additional costs on his ticket for the mission" on the ground that "the notice cancelling the mission ... came from unconventional sources - the Travel Agency. ... not known to be officially linked with the United Nations Administration for purposes of transmitting official messages between the United Nations Administration and United Nations staff." Furthermore, "The act which [the Applicant] committed not only caused no pecuniary or political harm to the UN, but was, in fact, of international benefit to the Organization."

On 16 June 1992, the Assistant Secretary-General for Human Resources Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "The Secretary-General has re-examined your case in the light of the Board's report. He regrets that you were not informed of the decision not to allow you to proceed to Moscow on official travel in conjunction with your home leave as soon as that decision had been taken. However, the Secretary-General agrees with the conclusion reached by the majority of the Panel that, before you decided to proceed to Moscow, you were nonetheless on notice that the travel authorization had been cancelled. Accordingly, he has decided to accept the Board's recommendation that your appeal be rejected."

On 25 January 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's travel had been duly authorized by the Chief of TARAS.

2. The Applicant acted in good faith and did not intend to substitute his own judgement for that of his supervisors.

3. The decision of the Director, Programme Support Division, DTCD, to cancel the trip was based on personal reasons, contrary to the interests of the United Nations.

Whereas the Respondent's principal contentions are:

1. The Applicant's trip to the Soviet Union was not authorized, and, therefore, expenses incurred by him are not reimbursable.

2. The decision to cancel the Applicant's trip was not vitiated by prejudice or other improper motives.

The Tribunal, having deliberated from 30 June to 13 July 1994, now pronounces the following judgement:

I. The Applicant claims that the mission had been authorized and that his actions were in good faith. Staff rule 107.6 specifies:

> "Before travel is undertaken it shall be authorized in writing. In exceptional cases, staff members may be authorized to travel on oral orders, but such oral authorization shall require written confirmation. A staff member shall be personally responsible for ascertaining that he or she has the proper authorization before commencing travel."

II. This rule clearly establishes that the onus was on the Applicant to determine whether he was authorized to travel. According to the Applicant, he did request and subsequently obtained the authorization to travel to the Soviet Union for three days in connection with home leave.

III. It is not in dispute that a few weeks prior to the Applicant's departure there was confusion regarding his travel entitlements. Then, two days before his departure, the Applicant was informed at the UN Travel Agency of the cancellation of his trip to the Soviet Union. It is conceivable that the Applicant believed that the cancellation of his mission was caused by another administrative misunderstanding rather than a decision by his supervisors. Nevertheless, the Respondent claims that the Applicant departed fully aware that the trip was unauthorized and that therefore his request for reimbursement should be rejected. The Tribunal has some difficulty in fully accepting this contention as it believes that this regrettable confusion was partly the fault of the Respondent.

IV. The Respondent failed in his responsibility to take diligent and reasonable steps to communicate to the Applicant that the mission had been cancelled. The Tribunal notes that in a communication dated 25 June 1991, the Director, Programme Support division, DTCD, asked the Acting Executive Officer, DTCD, to amend the Applicant's Travel Authorization to cancel the portion of travel to the Soviet Union. A copy of this communication was apparently sent to the Applicant but he alleges he never received it. This allegation has not been disputed by the Respondent.

The Tribunal notes that the Administration used poor judgement when it left it to the Travel Agency to convey to the Applicant that his travel authorization had been changed. The lack of direct communication was underscored by the JAB in its report, as follows:

> "At the same time, the majority wishes to draw to the attention of the Administration that [the Applicant] was informed only at the last moment of the cancellation of what he believed to be an authorized mission. It recommends that steps be taken to avoid such delays in future."

The JAB report also included a dissenting opinion by one of the members, which stated:

> "There is no showing that either the Director or someone in DTCD's Executive Office did, in fact, take any reasonably diligent steps to notify [the Applicant] of the cancellation. [The Applicant] was physically located in close proximity to either office. Common sense suggests that the very urgency of the matter should have dictated a necessity for full, effective steps aimed at stopping [the Applicant] from proceeding on to Moscow. Common sense was never followed in this case because DTCD preferred to leapfrog [the Applicant] in preference for the Travel Agency. This is a case of instructions not being direct and/or clear, a fault that does not reside in the staff member, but in the Administration."

In addition, the Secretary-General, in accepting the recommendation of the JAB, included the following statement in his letter conveying his decision:

> "The Secretary-General ... regrets that you were not informed of the decision not to allow you to proceed to Moscow on official travel in conjunction with your home leave as soon as that decision had been taken."

V. The Tribunal trusts that the Applicant was in good faith when he departed. He was acutely aware that this mission to the Soviet Union had been planned and cancelled twice in the past at the last minute. Believing some administrative misunderstanding had occurred, he paid the travel costs in order to avoid another embarrassing cancellation.

Nevertheless, the Applicant did have two days to verify with his supervisors whether the problem was administrative or whether in fact the original Travel Authorization had been cancelled. This omission, however regrettable, does not, in the Tribunal's view, detract from the Applicant's good faith.

VI. The Applicant also contends that he is entitled to reimbursement of his travel expenses on the basis of the general legal principle of the prohibition of unjust enrichment.

The doctrine of unjust enrichment is defined in Black's Law Dictionary (4th Edition, p. 1705) as:

> "[The] doctrine that a person shall not be allowed to profit or enrich himself inequitably at another's expense."

VII. As a direct result of the work performed by the Applicant during his mission to the Soviet Union in 1991, the Administration reaped international benefit. It led to the receipt by TARAS of candidacies of Russian specialists in the technical field. Thus, the Respondent implicitly ratified the Applicant's mission by actively partaking in discussions with the Soviet Union concerning these candidates.

VIII. Had the Respondent been steadfast in his assertion that the Applicant "misrepresent[ed] his presence as being on official UN business" and rejected the product of the Applicant's undertaking in the Soviet Union, then it could be argued that he did not gain from it. The Tribunal agrees with the dissenting opinion of the JAB which reads as follows:

> "7. ... The opinion here is that, given good faith intentions, [the Applicant's] acts could have been easily ironed out through the act of ratification. The act which [the Applicant] committed not only caused no pecuniary or political harm to the UN, but was, in fact, of international benefit to the Organization. It led to the realization of the very objectives which the UN had been striving to attain since 1989, namely the involvement of Russian experts in UN sponsored projects.
>
> 8. Why could the UN then not ratify, or affirm [the Applicant's] act, which had resulted in some benefit to the UN? The continued interaction between the DTCD and the Russians following closely upon [the Applicant's] mission would strongly suggest that [the Applicant's] act was done in the best interest of the UN, and in accordance with the objectives and directives of DTCD."

IX. Although the Administration refused to pay the Applicant's travel expenses, it has nevertheless benefitted from the fruit of the Applicant's work. In this respect, the Tribunal concludes that there has been an inequitable enrichment on the Respondent's part. The Tribunal concurs with the dissenting opinion of the JAB:

"Fairness and justice demands reimbursement of [the Applicant's] per diem and additional costs on his tickets for the mission."

The Applicant is therefore, entitled to be reimbursed his expenses of US$1,190.00.

X. Regarding the Applicant's claims for compensation for damages to his reputation due to the request for disciplinary measures against him, the Tribunal agrees with the Respondent's submission that the Applicant has failed to discharge the burden of proving improper motives in cancelling his mission to the Soviet Union.

XI. The disciplinary action was suggested in October 1991 and in February 1992, the Assistant Secretary-General for Human Resources Management closed the case as not warranting any disciplinary action. The Applicant did not substantially demonstrate that he in fact suffered any damages in so short a time period.

XII. In view of the foregoing, the Tribunal concludes from the record that the Applicant obtained the requisite authorization and that he was in good faith when he undertook his mission to the Soviet Union. Nevertheless, the Tribunal recognizes that both the Applicant and the Respondent failed in duly communicating with one another. This course of action resulted in this unfortunate case.

XIII. The Tribunal stresses that this case should be treated as a "cas d'espèce", as it is incumbent upon staff members to ensure that they have been authorized to travel before undertaking any mission on behalf of the Organization.

XIV. The Tribunal rejects the Applicant's claim for compensation for the damage to his reputation as he has failed to provide evidence thereof.

XV. For the foregoing reasons the Tribunal orders the Respondent to pay to the Applicant the amount of US$1,190.00, corresponding to his travel expenses.

(Signatures)

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

Geneva, 13 July 1994

R. Maria VICIEN MILBURN
Executive Secretary

STATEMENT BY MR. LUIS DE POSADAS MONTERO

I agree with the above judgement only on the grounds set forth in paragraphs VI to XI.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Geneva, 13 July 1994

R. Maria VICIEN MILBURN
Executive Secretary